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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9 DAMEN S. BACHMAN,

10                   Petitioner,

CASE NO. C10-840-MJP-JPD

11                   v.

12 PAT GLEBE,

13                   Respondent.

REPORT AND RECOMMENDATION

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15                   Petitioner is a state prisoner who is currently incarcerated at the Stafford Creek  
16 Corrections Center in Aberdeen, Washington. He has filed a petition for writ of habeas corpus  
17 under 28 U.S.C. § 2254 seeking relief from his 2003 Whatcom County Superior Court judgment  
18 and sentence. Petitioner acknowledges in his petition, and this Court's records confirm, that  
19 petitioner previously filed a federal habeas petition challenging the same 2003 Whatcom County  
20 judgment. (*See C07-136-JCC.*) That petition was dismissed with prejudice on August 10, 2007.  
21 (*See id.*, Dkt. Nos. 16, 17 and 18.) The instant petition is therefore a second or successive one.  
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23                   By statute, this Court is without jurisdiction to consider a second or successive habeas  
24 petition until the Ninth Circuit Court of Appeals has authorized its filing. *See* 28 U.S.C.  
25 § 2244(b)(3)(A); Circuit Rule 22-3. Section 2244(b)(3)(A) provides that *before* a second or  
26 successive habeas petition is filed in the district court, “the applicant shall move in the

REPORT AND RECOMMENDATION

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1 appropriate court of appeals for an order authorizing the district court to consider the  
2 application.” Section 2244(b)(3)(A) thus creates a “gatekeeping” mechanism at the appellate  
3 court for the consideration of second or successive applications in the district courts. *See Felker*  
4 *v. Turpin*, 518 U.S. 651, 657 (1996). The court of appeals may authorize the filing of a second  
5 or successive application for habeas relief only if it determines the application makes a prima  
6 facie showing that the application satisfies the requirements set forth in 28 U.S.C. § 2244(b)(2).

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8 Based on the foregoing, this Court recommends that petitioner’s § 2254 petition be  
9 transferred to the Ninth Circuit pursuant to 28 U.S.C. § 1631 and Circuit Rule 22-3(a). A  
10 proposed order accompanies this Report and Recommendation.

11 DATED this 24th day of May, 2010.  
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14 JAMES P. DONOHUE  
United States Magistrate Judge  
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